

FERN GIBSON

VS.

Respondent

AND

Insurance Carrier

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The Administrative Law Judge awarded claimant permanent partial disability benefits based upon a stipulated 10 percent whole bodily functional impairment rating. The parties requested the Appeals Board to review the issues of (1) nature and extent of

disability and (2) average weekly wage. Those are the only two issues before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire the record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be affirmed.

The parties stipulated that on February 26, 1995, claimant sustained personal injury by accident arising out of and in the course of employment with respondent. On that date claimant was helping to transfer a patient from the toilet to a wheelchair and experienced a sharp pain in her chest. Later during treatment, claimant's doctor discovered claimant had fractured the ninth rib on the left. The parties also stipulated claimant sustained a 10 percent whole bodily functional impairment as a result of the work-related accident. One of the principal issues before the Administrative Law Judge was whether the accident either caused permanent injury to claimant's back or caused permanent aggravation to claimant's preexisting osteoporosis.

Based upon a careful review of the evidence as outlined in the Award, the Administrative Law Judge determined that claimant had failed to prove her ongoing back complaints were a consequence of the work-related accident rather than the ongoing osteoporosis disease process combined with the normal effects of aging. The Administrative Law Judge also found that claimant had failed to prove the osteoporosis was permanently aggravated or accelerated by the accident.

The Appeals Board finds the Administrative Law Judge's conclusions are accurate, appropriate, and should be adopted by the Appeals Board as its own. After a close review of the evidence, the Appeals Board also finds that the only injury sustained as a result of the February 26, 1995, accident was a fractured left rib and that the restrictions and limitations placed upon claimant are due to claimant's osteoporosis rather than the left rib injury. Therefore, the award of permanent partial disability benefits based upon the stipulated 10 percent functional impairment rating should be affirmed.

The Administrative Law Judge followed the provisions of K.S.A. 44-511 and found claimant's average weekly wage to be \$241.36. The Appeals Board is not persuaded to modify that finding as it appears the Administrative Law Judge applied the appropriate statutory provisions to determine the wages of a part-time employee.

The Appeals Board hereby adopts the Administrative Law Judge's findings and conclusions as its own to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 20, 1996, entered by Administrative Law Judge Bruce E. Moore should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director